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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re PATRICK H. et al., Persons Coming Under the Juvenile Court Law.	B293690
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CYNTHIA N., Defendant and Appellant;	Los Angeles County Super. Ct. Nos. 18CCJP05887A–B

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Conditionally affirmed and remanded with directions.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and

Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Cynthia N. (mother) appeals from the juvenile court's jurisdictional findings and dispositional orders declaring her children dependents of the court and removing them from her custody. While this appeal was pending, however, the juvenile court sustained supplemental jurisdictional allegations against both mother and Michael H. (father) and ordered the children removed from both parents. Neither parent appealed from those orders.¹ The Department of Children and Family Services (Department) contends mother's jurisdictional and dispositional challenges are now moot. We agree. But because we also conclude, and the Department properly concedes, that mother still has a viable claim under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.), we do not dismiss the appeal. Instead, we conditionally affirm and remand with directions.

DISCUSSION

On September 13, 2018, the Department filed a dependency petition alleging jurisdiction over Patrick H. (age 15) and Serena H. (age 11) under Welfare and Institutions Code section

¹ We take judicial notice of the juvenile court's minute orders of March 13, 2019, and the fact that neither parent has appealed from the disposition orders entered on that date. (Evid. Code, § 452, subd. (d); see Cal. Rules of Court, rule 8.406(a)(1) [60-day statute of limitations for appeal].)

300, subdivision (b)(1).² The petition alleged that mother suffers from mental and emotional problems (count b-1) and that both she and father are current drug abusers (counts b-2 and b-3). The juvenile court sustained the allegations, declared the children to be dependents of the court, removed them from mother's custody, and placed them with father. Mother appealed.

On appeal, mother argues that there is insufficient evidence to support the court's jurisdictional findings because there is no substantial evidence that any mental health problems or drug use put her children at physical risk; that removal was improper because there is no substantial evidence of either danger to the children or lack of reasonable alternatives to removal; that the court abused its discretion by designating father and maternal grandmother as the holders of the children's educational rights; and that the Department failed to comply with ICWA's investigation and notice provisions.

On January 29, 2019, while this appeal was pending, the Department filed a supplemental petition under section 387, and on March 13, 2019, the court sustained the supplemental allegations against father and mother, removed Patrick and Serena from both parents, and placed them with the paternal grandmother. The Department contends these events render mother's challenges to the jurisdictional findings and dispositional orders moot, but concedes the ICWA issue is justiciable.

² All undesignated statutory references are to the Welfare and Institutions Code.

1. Mootness

“The purpose of dependency proceedings is to protect children. (§ 300.2.) Dependency proceedings are civil in nature and are designed to protect the child, not to punish the parent. [Citation.] Therefore, the court takes jurisdiction over children (§ 300); it does not take jurisdiction over parents. Moreover, the court has jurisdiction over the children if the actions of either parent bring the child within one of the statutory definitions in section 300. [Citation.] The court gains jurisdiction over a parent when the parent is properly noticed. [Citation.]” (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction ... enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

This is so even when an unchallenged basis for jurisdiction concerns the other parent. That’s “because the juvenile court ‘will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations. Further, the court will still be permitted to exercise personal jurisdiction over [both parents] and adjudicate [their] parental rights, if any, since that jurisdiction is derivative of the court’s jurisdiction over the minor and is unrelated to [the parent’s] role in creating the conditions justifying the court’s assertion of dependency jurisdiction.’

[Citation.]” (*In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316.)

Thus, when a parent urges appellate relief from some, but not all, of the juvenile court’s jurisdictional findings, we are not presented with a justiciable issue. Stated differently, when jurisdictional challenges do not call into question the juvenile court’s overall assumption of dependency jurisdiction, any order we enter on that issue “will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief” and rendering the appeal nonjusticiable. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490–1491.) Here, mother does not challenge the juvenile court’s finding on count b-3 of the section 300 petition, which concerned father’s substance abuse. (See *In re T.G.* (2010) 188 Cal.App.4th 687, 692 [any parent “aggrieved” by a ruling of the dependency court has standing to challenge the ruling on appeal].) As such, her jurisdictional claims are moot.³

³ Contrary to the Department’s claim, although the court sustained the jurisdictional allegation in the section 387 petition, that finding does *not* moot mother’s jurisdictional claims. Unlike a section 342 petition, which “requires the trial court to determine whether newly alleged facts or circumstances establish jurisdiction independent of facts alleged in the section 300 petition” (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225), a section 387 petition is used “when the Department seeks to modify a previous order placing a dependent child with a parent. [Citation.]” (*In re Joshua G.*, *supra*, 129 Cal.App.4th at p. 203.) Thus, a “section 387 supplemental petition does not affect the jurisdiction of the court.” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077.) And, because jurisdiction over the children is a prerequisite to filing a section 387 petition, if “the court was without jurisdiction to rule on the section 300 petition, it was also without jurisdiction to consider the section 387 petition.” (*Travis C.*, at p. 1225.)

To be sure, when a parent challenges jurisdictional findings that form the basis for a removal order that the parent also challenges, we often exercise our discretion to consider the jurisdictional issues. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Here, however, because the court entered a *second* set of dispositional orders on March 13, 2019—in which the court again removed the children from mother and again awarded their educational rights to father and maternal grandmother—and mother has not appealed from those orders, mother’s challenges to the first set of dispositional orders are also moot. (See *In re Christopher B.* (1996) 43 Cal.App.4th 551, 556, fn. 2 [dispositional order removing the child from the home, issued upon a supplemental § 387 petition, is appealable as a judgment].) That’s because even were we to agree with mother’s challenges to the dispositional orders in this case, our conclusion would not affect the lower court’s *later* orders. In sum, this court’s decision on any of these issues could have no practical impact on the underlying dependency proceeding.

Because we cannot provide relief to mother on any jurisdictional or dispositional errors by way of this appeal, we do not address those claims. Because we *can* provide mother with relief on ICWA grounds, however, we do not dismiss the appeal.

2. ICWA

The Department has conceded that it did not conduct an adequate inquiry into Patrick’s and Serena’s possible Indian ancestry—either their possible Comanche ancestry through their

Therefore, a court’s jurisdictional findings under section 387 do not moot a parent’s challenge to earlier section 300 findings. (*Ibid.*)

father or their possible Omaha ancestry through their mother—and that the case must be remanded for further ICWA inquiry. Therefore, upon remand, the court shall direct the Department to interview the paternal grandmother to identify any living relatives who may have information on father's claim of possible Comanche Indian ancestry, and to interview mother, the maternal grandmother, and all available maternal relatives on mother's claim of possible Omaha Indian ancestry.

The Department has also conceded that it failed to notify the Comanche and Omaha tribes as ICWA requires. Upon remand, the court shall direct the Department to notice all Comanche and Omaha tribes, the Bureau of Indian Affairs, the Secretary of the Interior, and any other tribes the court directs the Department to notify upon its review of the Department's investigation.

If, after proper notice under ICWA, it is determined that the minors are Indian children and ICWA applies to these proceedings, mother and/or father are entitled to petition the juvenile court to invalidate orders that were entered in violation of title 25 United States Code sections 1911, 1912, and 1913. (See 25 U.S.C. § 1914; Cal. Rules of Court, rule 5.486(a) [petition to invalidate orders].) Should the Comanche or Omaha tribes determine the minors are Indian children, or other information show the minors to be Indian children as defined by ICWA, the court shall conduct new jurisdiction and disposition hearings, as well as all further proceedings, in compliance with ICWA and related California law.

DISPOSITION

The jurisdictional and dispositional orders are conditionally affirmed and the matter is remanded to the juvenile court with directions to order the Department to comply with the investigation and notice provisions of ICWA in accordance with the views expressed in section 2 of the discussion.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.